IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION No.1753 of 2006.
IN
SUIT No.717 of 2005.

Morarji Hariram .... Plaintiff.

Versus.

Neera Handa & Ors. .... Defendants.

Ms. Snehal Shah with Mr. Yogesh Thakur i/b
L. J. Law, Advocate for the plaintiff.

Mr. Prashant G. Karande, Advocate for
Defendant nos. 1 to 3.

CORAM :SMT. NISHITA MHATRE J.

DATE :07/06/2006.

P.C.

1. This Notice of Motion has been taken out to set aside ex-parte decree passed in the suit by an order dated 24th March, 2006. This Court has decreed the summary suit against the plaintiff. The plaintiff, it appears, sought execution of the decree. The defendants have filed the present Motion to set aside the said ex-parte decree. In my view, since it is an order passed under Order VIII Rule 5 and not under Order IX Rule 13 of the Civil Procedure Code, the Motion for setting aside such an ex-parte decree is not maintainable. The defendants will have to file an appeal against such a decree as is well settled by

the judgment reported in **1999 (1) Bom. CR 97 (Dhanwantrai R. Yogi & Ors. Vs. Satish J. Dave & Ors).**

2] Notice of Motion is dismissed accordingly. At this stage, the plaintiff states that he will not execute the decree for a period of two weeks from today.

(**SMT.NISHITA MHATRE,J.)**